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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA
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10 Paula K. Jeffries,) No. CIV 12-853-TUC-LAB
11 Plaintiff,) **ORDER**
12 vs.)
13 Carolyn W. Colvin, Commissioner of)
14 Social Security,)
15 Defendant.)
16 _____)

17 The plaintiff filed this action for review of the final decision of the Commissioner for
18 Social Security pursuant to 42 U.S.C. § 405(g). (Doc. 1)

19 The Magistrate Judge presides over this case pursuant to 28 U.S.C. § 636(c) having
20 received the written consent of both parties. *See* FED.R.CIV.P. 73; (Doc. 19).

21 The final decision of the Commissioner is not “supported by substantial evidence and
22 free from legal error.” *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). Specifically, the ALJ
23 failed to properly assess the claimant’s non-exertional limitations in light of the contradictory
24 medical record. The case will be remanded for further proceedings.

25
26 PROCEDURAL HISTORY

27 On January 11, 1994, Jeffries constructively filed an application for disability insurance
28 benefits. (Tr. 13, 50) She alleged disability beginning on August 17, 1993, due to organic

1 solvent induced immunotoxicity syndrome, toxic encephalopathy, post-traumatic distress
2 disorder, and chemical sensitivity. (Tr. 70) Her claim was denied initially and upon
3 reconsideration. (Tr. 55-58, 61-64)

4 Jeffries requested review and appeared with counsel at a hearing before Administrative
5 Law Judge (ALJ) Frederick J. Graf on August 17, 1995. (Tr. 36) In his decision, dated
6 February 23, 1996, the ALJ found Jeffries was not disabled. (Tr. 13-19) Jeffries appealed, but
7 the Appeals Council denied review making the decision of the ALJ the final decision of the
8 Commissioner. (Tr. 4-5); *See Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989).

9 Jeffries filed an action for review in U.S. District Court, lost, and subsequently appealed
10 to the Ninth Circuit. 2001 WL 312380 (9th Cir. 2001). The Ninth Circuit reversed and
11 remanded the case to the Commissioner for further proceedings. *Id.*

12 Jeffries appeared with counsel at a second hearing before ALJ Graf on March 18, 2004.
13 (Tr. 406-458) In his decision, dated May 25, 2004, the ALJ again found Jeffries was not
14 disabled. (Tr. 390-398) Jeffries appealed, but the Appeals Council denied review making the
15 decision of the ALJ the final decision of the Commissioner. (Tr. 374-376)

16 Jeffries again filed an action for review in U.S. District Court, lost, and subsequently
17 appealed to the Ninth Circuit. 2007 WL 3390932 (9th Cir. 2007). The Ninth Circuit reversed
18 again and remanded the case to the Commissioner for further proceedings. *Id.*

19 Jeffries appeared with counsel at a hearing before ALJ Norman R. Buls on January 18,
20 2011. (Tr. 1475-1500) In his decision, dated March 17, 2011, the ALJ found Jeffries was not
21 disabled. (Tr. 922-933) Jeffries appealed, but the Appeals Council denied review making the
22 decision of the ALJ the final decision of the Commissioner. (Tr. 895-897)

23 Jeffries subsequently filed the pending action for review of the Commissioner's final
24 decision. (Doc. 1) She argues the ALJ failed to properly account for her non-exertional
25 limitations such as her mental impairments and environmental limitations and failed to properly
26 assess her own credibility. (Doc. 20, pp. 8-14)

27
28 Claimant's Work History and Medical History

1 Jeffries worked for IBM from 1978 to 1989 in a number of different capacities. (Tr. 80)
2 In 1987, she worked as an editorial specialist. (Tr. 1494) Later, she worked as a learning center
3 coordinator. (Tr. 80, 1494)

4 In March of 1991, Jeffries began work as senior media technician in the University of
5 Arizona Health Sciences Center. (Tr. 70-76, 1478) She was essentially healthy until October
6 of 1991 when she began to develop an intolerance for the chemical solvents in the air. (Tr. 70,
7 144) She developed fatigue, which was diagnosed as depression. (Tr. 144) Later, she
8 developed headaches, sinus pain and congestion, burning eyes, cough, dyspnea on exertion,
9 chest discomfort, and body aches. (Tr. 144) In April of 1992, her workplace was moved out
10 of the Health Sciences building in an effort to reduce her exposure to irritating fumes. (Tr. 70)
11 She stopped working in August of 1993 due to Multiple Chemical Sensitivity and Toxic
12 Encephalopathy. (Tr. 70)

13
14 Physical Impairments

15 In April of 1992, Jefferey Burgess, M.D., and Richard Dart, M.D., Ph.D., examined
16 Jeffries and assessed “possible low[-] level formaldehyde exposure” and “dyspnea on exertion.”
17 (Tr. 145) They advised that her office should be moved away from the Gross Anatomy and
18 Cold Storage rooms. (Tr. 146)

19 In October of 1992, Jeffries was examined by her treating physician, Robert E. Rogers,
20 M.D., for numbness and tingling down both legs. (Tr. 168) He noted Jeffries had suffered from
21 fatigue since November of 1991, which he ascribed to depression. (Tr. 168) He now began to
22 wonder if it was related to her formaldehyde exposure. (Tr. 168) Her previous complaints of
23 eye and chest irritation had improved when she stopped working in an area of the building that
24 had “some problems with formaldehyde and a questionable tight building syndrome.” (Tr. 168)
25 In January of 1993, Jeffries complained of a chronic cough lasting two months. (Tr. 159)
26 Rogers assessed “cough as a manifestation of reactive airway disease.” *Id.*

27 In January of 1993, James R. Carlson, M.D., an ear, nose, and throat specialist, assessed
28 “laryngitis from three etiologies: reflex esophagitis, postnasal drip, and asthma.” (Tr. 151, 153)

1 In February of 1993, Jeffries was examined by an allergy specialist, Uwe Manthei, M.D.,
2 (Tr. 154-55) He assessed her with allergic rhinitis and “possible adverse reaction to nonspecific
3 irritants.” (Tr. 155) In March of 1993, Manthei and Jeffries discussed an earlier positive test
4 for IgE antibodies to formaldehyde. (Tr. 150), see (Tr. 174, 185)

5 In July of 1994, Lyle H. Boyea, M.D., reviewed the medical record for the state disability
6 determination service. (Tr. 113-121) He concluded Jeffries had no exertional limitations but
7 did have environmental limitations. *Id.* She should avoid concentrated exposure to cold and
8 “avoid even moderate exposure” to “fumes, odors, dusts, gases, poor ventilation, etc.” due to
9 possible reactive airway disease. (Tr. 118)

10 The record contains treatment notes from Michael R. Gray, M.D., M.P.H. (Tr. 180-81,
11 243-244, 249-50, 258-263, 265-66) In November of 1994, Gray diagnosed 1. Aldehyde
12 induced toxicity; 2. Immune toxicity; 3. Toxic encephalopathy; 4. Sensitivity to multiple
13 chemicals; 5. Esophageal reflux with hyperacidity and associated chronic cough; 6.
14 Occupational asthma; and 7. Acute bronchitis. (Tr. 265) He completed a Residual Physical
15 Functional Capacity Assessment. (Tr. 267-274) He opined Jeffries could lift or carry 20
16 pounds occasionally and less than 10 pounds frequently. *Id.* She could stand and/or walk for
17 less than 2 hours in an 8-hour day. *Id.* He did not indicate how long she can sit, but he did
18 explain that she needs to periodically alternate between sitting and standing due to her myalgias
19 and fibromyositis. (Tr. 268) She should never climb ramps, stairs, ladders, ropes, or scaffolds.
20 *Id.* She has manipulative limitations due to balance problems and fatigue. (Tr. 270) She has
21 visual limitations due to problems with focusing. (Tr. 270) She should avoid all hazards such
22 as machinery and heights. (Tr. 271) She should avoid all exposure to fumes, odors, dusts,
23 gases, and poor ventilation. (Tr. 271) In January of 1995, Gray opined that “Paula Jeffries is
24 permanently and totally impaired with regard to the ability to pursue gainful employment.” (Tr.
25 260-261)

26 Gray’s diagnosis was questioned by Irving S. Belzier, M.D., who testified before ALJ
27 Graf as a medical expert at the hearing conducted on March 18, 2004. (Tr. 433-441) Belzier
28 stated that Gray’s diagnosis “with respect to chemical sensitivities is one of a controversial

1 nature.” (Tr. 434) In other words, his diagnosis is one about which there is no general medical
2 consensus. *Id.*

3 In March of 1997, Jeffries was evaluated by John B. Sullivan, Jr., M.D., for the State
4 Compensation Fund, an Arizona worker’s compensation insurance provider. (Tr. 633) Sullivan
5 opined that Jeffries does not suffer from immunotoxicity or toxic encephalopathy. *Id.* Instead,
6 he opined she “suffers from a stress disorder relating to fears and threats from her previous
7 environmental exposure to formaldehyde.” *Id.* He believed, “[i]f she is able to function in her
8 home environment, she would probably function in an environment that meets ASHRAE
9 [American Society of Heating, Refrigeration, and Air Conditioning Engineers] standards of
10 ventilation.” *Id.*

11 12 Mental Impairments

13 In November of 1993, Jeffries was evaluated by neuropsychologist Sheila Bastien, Ph.D.
14 (Tr. 193-229) Bastien diagnosed Axis I: Post-Traumatic Stress Disorder, with anxiety and
15 depression; Axis II: No diagnosis; Axis III: Toxic encephalopathy; multiple chemical
16 sensitivity by history; Axis IV: Severity of Psychosocial Stressors: 5 (Extreme); Axis V:
17 Current, [Global Assessment of Functioning] GAF: 45. (Tr. 215) She opined that “in a normal
18 office environment where scents were present she would have severe problems with memory,
19 concentration, motor function and tactual-kinesthetic ability.” (Tr. 214)

20 In March of 1994, Bastien wrote a supplementary neuropsychological report in support
21 of Jeffries’s Social Security claim. (Tr. 245-248) Bastien opined that Jeffries meets Social
22 Security listing 12.02 Organic Mental Disorders and 12.04 Affective Disorders. *Id.* She wrote,
23 “it is my opinion that Ms. Jeffries is totally and completely disabled from any gainful
24 employment at present, and this is based on multiple areas of disability.” (Tr. 249) (emphasis
25 in original) It is not clear why Bastien’s second report cited organic disorders and affective
26 disorders while her original report cited only post-traumatic stress disorder.

27 In August of 1994, Jeffries was examined by Jill M. Plevell-Omdahl, Ph.D. (Tr. 253-
28 255) Plevell-Omdahl found no evidence in support of a diagnosis of PTSD, and rejected the

1 conclusions reached by Bastien. *Id.* In fact, she did not find evidence for any specific mental
2 disorder. *Id.* She did, however, find some mental impairment. *Id.* She concluded, “this client
3 is capable of performing simple tasks.” (Tr. 255) “She can understand and carry out
4 directions.” *Id.* “She may have some difficulty remembering instructions.” *Id.* “She could not
5 demonstrate good judgment.” (Tr. 255)

6 In September of 1995, Jeffries was referred to Hector J. Fernandez-Barillas, Ph.D., for
7 psychometric consultation. (Tr. 357-368) He diagnosed Axis I: Adjustment disorder with
8 mixed anxiety and depressed mood; Axis II: No diagnosis or condition; Axis III: Toxic
9 encephalopathy and multiple chemical sensitivity by history; Axis IV: Psychosocial and
10 environmental problems: unemployment and inadequate finances; Axis V: Current GAF: 45;
11 Highest GAF Past Year: 45. (Tr. 362) He found moderate limitation in the functional areas of
12 understanding and memory, sustained concentration and persistence, social interaction, and
13 adaptation. (Tr. 365-66) He wrote, “[c]laimant’s limitations have been the result of unexpected
14 exposure to chemicals to which she’s been sensitive secondary to the formaldehyde toxicity.”
15 (Tr. 367) “She seemed to be otherwise functional but her vulnerability remains a formidable
16 obstacle.” *Id.* It is unclear why Fernandez-Barillas documented so many areas of moderate
17 limitation and yet concluded she was “otherwise functional.” It is possible he believes she
18 would be functional if she were in a controlled environment, but he does not say that explicitly.

19 In October of 1995, Jeffries was examined by David A. Ruben, M.D., for the state
20 disability determination service. (Tr. 369-372) Ruben diagnosed Axis I: 1. Adjustment
21 disorder with depression, mainly exhibited as irritability. 2. Cognitive disorder, NOS; Axis
22 II: No diagnosis; Axis III: There is documentation in the chart of immune sensitivity
23 secondary to toxic exposure. Multiple headache, fatigue, muscle pains and other symptoms as
24 described in reports; Axis IV: Inability to pursue work; inability to go out into her
25 environment; difficulty with mental concentration and effort, which decreases her social
26 support. Axis V: GAF: 45. (Tr. 372) Ruben was impressed by many aspects of her higher
27 mental functioning, but he noted “the fluidity and fluency of her speech and thought processes
28 [are] impaired.” (Tr. 372) He concluded “this lady is sensitive to exposure in all except a

1 controlled environment.” *Id.* “In addition, any exposure increases her symptomatology which
2 includes difficulty with concentration, irritability, and cognitive functions.” *Id.* “Additionally
3 she has physical symptoms most prominently of headache, fatigue, muscle and joint pains,
4 which make functioning limited, as described above.” *Id.*

5 The record contains an IQ evaluation administered by Alice F. Chang, Ph.D. in March
6 of 2004. (Tr. 883-885) Chang was in general agreement with Barillas’s Medical Source
7 Statement, but she believed that Jeffries’s “ability to make judgments that are commensurate
8 with the functions of unskilled work has deteriorated since 1995.” (Tr. 885) “Her inability to
9 verbalize in a timely fashion causes her much hesitancy and would cause her not to be able, if
10 stressed at all, to make work related decisions appropriately.” (Tr. 885)

11 In September of 2004, a physician, whose signature is illegible, reviewed the medical
12 record for the state disability determination service. That physician found no medically
13 determinable psychological impairment. (Tr. 122-131)

14 In February of 2005, Robert Estes, M.D., reviewed the medical record for the state
15 disability determination service and completed a Psychiatric Review Technique form. (Tr. 133-
16 143) He found no medically determinable impairment. *Id.*

17
18 Hearing Testimony

19 On January 18, 2011, Jeffries appeared with counsel at a hearing before ALJ Norman R.
20 Buls. (Tr. 1475) She was 52 years old at the time of the hearing, 39 years old on her last
21 insured date. (Tr. 1476) In her application for benefits, she alleged disability beginning on
22 August 17, 1993, due to organic solvent induced immunotoxicity syndrome, toxic
23 encephalopathy, post-traumatic distress disorder, and chemical sensitivity. (Tr. 70)

24 Jeffries worked for IBM from 1978 to 1989 in a number of different capacities. (Tr. 80)
25 In 1987 she worked as an editorial specialist. (Tr. 1494) Later, she worked as a learning center
26 coordinator. (Tr. 80, 1494)

27 Toward the end of 1993, Jeffries worked as a senior media technician “providing
28 audio/visual setups, microphone setups and stuff for the College of Medicine at the University

1 of Arizona Hospital. . . .” (Tr. 1478) There, she was exposed to formaldehyde, which she
2 believes triggered her current impairment. (Tr. 70)

3 Her condition has not improved significantly since her exposure. (Tr. 1478) In fact, she
4 believes her ability to concentrate and process information is getting worse. (Tr. 1479) She still
5 experiences fatigue, generalized pain, and sleep that is not restful. (Tr. 1480) She gets hoarse
6 and has a chronic cough. (Tr. 1481) Exhaust fumes cause her muscles to contract painfully.
7 (Tr. 1481-82) New carpeting causes her to feel intolerable pressure in her head. (Tr. 1482)

8 She writes for a newsletter that is published by a non-profit entity run by her friend. (Tr.
9 1482) Writing, however, is frustrating for her because it takes such a long time. (Tr. 1482,
10 1484)

11 Vocational expert Kathleen McAlpine testified that Jeffries could perform her past
12 relevant work as an editorial specialist if she could tolerate exposure to “moderate fumes, odors,
13 gases, poor ventilation or dust, but nothing more than moderate.” (Tr. 1492-1495), see (Tr. 80)
14 McAlpine did not believe Jeffries could return to work as a media technician because such a
15 person would work in many places and could be occasionally exposed to substandard air
16 quality. (Tr. 1495) In the alternative, McAlpine identified other jobs in the nation economy
17 that a person with Jeffries’s limitations could perform – receptionist/information clerk, customer
18 service representative, and order clerk. (Tr. 1495)

19 20 CLAIM EVALUATION

21 Social Security Administration (SSA) regulations require that disability claims be
22 evaluated pursuant to a five-step sequential process. 20 C.F.R. §§ 404.1520, 416.920; *Baxter*
23 *v. Sullivan*, 923 F.2d 1391, 1395 (9th Cir. 1991). The first step requires a determination of
24 whether the claimant is engaged in substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4),
25 416.920(a)(4). If so, then the claimant is not disabled, and benefits are denied. *Id.*

26 If the claimant is not engaged in substantial gainful activity, the ALJ proceeds to step
27 two, which requires a determination of whether the claimant has a “medically severe impairment
28 or combination of impairments.” 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). In making a

determination at step two, the ALJ uses medical evidence to consider whether the claimant's impairment more than minimally limits or restricts his or her "physical or mental ability to do basic work activities." *Id.* If the ALJ concludes the impairment is not severe, the claim is denied. *Id.*

Upon a finding of severity, the ALJ proceeds to step three, which requires a determination of whether the impairment meets or equals one of several listed impairments that the Commissioner acknowledges are so severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); 20 C.F.R. Pt. 404, Subpt. P, App.1. If the claimant's impairment meets or equals one of the listed impairments, then the claimant is presumed to be disabled, and no further inquiry is necessary. *Ramirez v Shalala*, 8 F.3d 1449, 1452 (9th Cir. 1993). If the claimant's impairment does not meet or equal a listed impairment, evaluation proceeds to the next step.

The fourth step requires the ALJ to consider whether the claimant has sufficient residual functional capacity (RFC)¹ to perform past work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If yes, then the claim is denied. *Id.* If the claimant cannot perform any past work, then the ALJ must move to the fifth step, which requires consideration of the claimant's RFC to perform other substantial gainful work in the national economy in view of the claimant's age, education, and work experience. 20 C.F.R. §§ 404.1520(a)(4); 416.920(a)(4).

In determining whether the claimant retains the ability to perform other work, the ALJ may refer to the Medical Vocational Guidelines ("the grids") promulgated by the SSA. *See* 20 C.F.R. Pt. 404, Subpt. P, App.2; *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573, 576-577 (9th Cir. 1988). The grids categorize jobs according to their exertional requirements such as sedentary work, light work, or medium work. *Tackett v. Apfel*, 180 F.3d 1094, 1101 (9th Cir. 1999). The grids calculate whether or not the claimant is disabled based on the claimant's exertional ability, age, education, and work experience. *Id.* The grids are a

¹ Residual functional capacity is defined as that which an individual can still do despite his or her limitations. 20 C.F.R. §§ 404.1545, 416.945.

1 valid basis for denying claims where they completely and accurately describe the claimant's
2 abilities and limitations. *Id.* at 1101-02. If the claimant has only exertional limitations, the
3 claim may be resolved based only on the grids. *Lounsbury v. Barnhart*, 468 F.3d 1111, 1115
4 (9th Cir. 2006).

5 If the claimant has significant non-exertional limitations, the grids do not apply. *Penny*
6 *v. Sullivan*, 2 F.3d 953, 958-959 (9th Cir.1993). "Non-exertional limitations are limitations that
7 do not directly affect a claimant's strength." *Burkhart v. Bowen*, 856 F.2d 1335, 1340 (9th Cir.
8 1988). Mental limitations, for example, are non-exertional. *Id.* at 1340-41. If significant non-
9 exertional limitations prevent the claimant from performing the full range of work in any
10 exertional category, the ALJ must take the testimony of a vocational expert to deny the claim.
11 *Id.* at 1341.

12 13 The ALJ's Findings

14 At step one of the disability analysis, the ALJ found Jeffries "did not engage in
15 substantial gainful activity during the period from her alleged onset date of August 17, 1993
16 through her date last insured of December 31, 1997" (Tr. 924) At step two, he found
17 Jeffries "had the following severe impairments: formaldehyde induced immune toxicity and
18 chemical sensitivity" (Tr. 924) At step three, the ALJ found Jeffries's impairments did
19 not meet or equal the criteria for any impairment found in the Listing of Impairments, Appendix
20 1, Subpart P, of 20 C.F.R., Part 404. (Tr. 928)

21 The ALJ then analyzed Jeffries's residual functional capacity (RFC). He found she "has
22 the residual functional capacity to perform a full range of work at all exertional levels but with
23 the following non[-]exertional limitations: restricted to no more than moderate exposure to
24 fumes, odors, gases, poor ventilation and noticeable dust in the air." (Tr. 928)

25 At step four, the ALJ found Jeffries "was capable of performing past relevant work as
26 an editorial specialist." (Tr. 931) In the alternative, he found at step five that Jeffries was not
27 disabled using the grids. He further found by relying on the testimony of the vocational expert
28

1 that Jeffries was able to work as a receptionist information clerk, telephone customer service
2 representative, and order clerk. (Tr. 932)

3
4 STANDARD OF REVIEW

5 An individual is entitled to disability benefits if he or she demonstrates, through
6 medically acceptable clinical or laboratory standards, an inability to engage in substantial
7 gainful activity due to a physical or mental impairment that can be expected to last for a
8 continuous period of at least twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). “[A]
9 claimant will be found disabled only if the impairment is so severe that, considering age,
10 education, and work experience, that person cannot engage in any other kind of substantial
11 gainful work which exists in the national economy.” *Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir.
12 1993).

13 The findings of the ALJ are meant to be conclusive. 42 U.S.C. §§ 405(g), 1383(c)(3).
14 The decision to deny benefits “should be upheld unless it contains legal error or is not supported
15 by substantial evidence.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial
16 evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate
17 to support a conclusion.” *Id.* It is “more than a mere scintilla but less than a preponderance.”
18 *Id.*

19 “Where evidence is susceptible to more than one rational interpretation, the ALJ’s
20 decision should be upheld.” *Orn*, 495 F.3d at 630. “However, a reviewing court must consider
21 the entire record as a whole and may not affirm simply by isolating a specific quantum of
22 supporting evidence.” *Id.*

23 In evaluating evidence to determine whether a claimant is disabled, the opinion of a
24 treating physician is entitled to great weight. *Ramirez v. Shalala*, 8 F.3d 1449, 1453-54 (9th Cir.
25 1993). The ALJ may reject a treating physician’s uncontradicted opinion only if she sets forth
26 clear and convincing reasons for doing so. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).
27 If the treating physician’s opinion is contradicted by another doctor, the ALJ may reject that
28 opinion only if he provides specific and legitimate reasons supported by substantial evidence

1 in the record. *Lester*, 81 F.3d at 830. No distinction is drawn “between a medical opinion as
2 to a physical condition and a medical opinion on the ultimate issue of disability.” *Rodriguez*
3 *v. Bowen*, 876 F.2d 759, 761 n.7 (9th Cir. 1989).

4 “The opinion of an examining physician is, in turn, entitled to greater weight than the
5 opinion of a non[-]examining physician.” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996).
6 “[T]he [ALJ] must provide ‘clear and convincing’ reasons for rejecting the uncontradicted
7 opinion of an examining physician.” *Id.* “[T]he opinion of an examining doctor, even if
8 contradicted by another doctor, can only be rejected for specific and legitimate reasons that are
9 supported by substantial evidence in the record.” *Id.* at 830-31.

10 “Where medical reports are inconclusive, questions of credibility and resolution of
11 conflicts in the testimony are functions solely of the [ALJ].” *Magallanes*, 881 F.2d 747, 751
12 (9th Cir. 1989) (punctuation omitted). The ALJ’s finding that a claimant is less than credible,
13 however, must have some support in the record. *See Light v. Social Sec. Admin.*, 119 F.3d 789
14 (9th Cir. 1997).

15 The ALJ need not accept the claimant’s subjective testimony of disability, but if he
16 decides to reject it, “[t]he must provide specific, cogent reasons for the disbelief.” *Lester*, 81
17 F.3d at 834. “Unless there is affirmative evidence showing that the claimant is malingering, the
18 [ALJ]’s reasons for rejecting the claimant’s testimony must be clear and convincing.” *Id.*
19 “General findings are insufficient; rather, the ALJ must identify what testimony is not credible
20 and what evidence undermines the claimant’s complaints.” *Id.*

21 22 DISCUSSION

23 In 2007, this case came before the Ninth Circuit for the second time. In the
24 administrative decision then under review, the ALJ concluded that Jeffries’s condition
25 precluded her “exposure to fumes, dusts, odors, gases, and poor ventilation without
26 qualification.” 2007 WL 3390932 (9th Cir. 2001) (punctuation modified). Nevertheless, the
27 ALJ concluded she could perform her past relevant work as a media technician because it “did
28 not involve exposure to *excessive* dusts or odors.” *Id.* (emphasis added) This contradiction

1 between Jeffries's relatively stringent air quality needs and the apparently run-of-the-mill
2 quality of her workplace environment caused the Ninth Circuit to reverse the decision of the
3 ALJ and remand for further proceedings.

4 In the decision under review today, the ALJ concluded that Jeffries can tolerate
5 "moderate exposure to fumes, odors, gases, poor ventilation and noticeable dust in the air." (Tr.
6 928) (emphasis added) He found she has no nonexertional limitations provided she is not
7 exposed to more than a moderate level of environmental contaminants. *Id.*

8 The issue before the court is whether the ALJ's evaluation of Jeffries's limitations is
9 supported by substantial evidence and free from legal error. *See Orn v. Astrue*, 495 F.3d 625,
10 631 (9th Cir. 2007). The court concludes it is not. The court does not reach Jeffries's remaining
11 claims of error.

12 The ALJ in this case accepted Jeffries's general contention that she suffers from
13 formaldehyde induced immune toxicity and chemical sensitivity. (Tr. 924) Nevertheless, he
14 found she has no nonexertional limitations provided she is not exposed to more than a moderate
15 level of environmental contaminants. He reached this conclusion after analyzing the rather
16 extensive medical record. His analysis of that record, however, does not support his ultimate
17 assessment of Jeffries' RFC. *See, e.g., Toland v. Astrue*, 2008 WL 4643327, 8 (C.D.Cal. 2008)
18 ("The RFC assessment must always consider and address medical source opinions, and if the
19 assessment conflicts with an opinion from a medical source, the ALJ must explain why the
20 opinion was not adopted.").

21 The medical record contains reports from a large number of physicians. Among those
22 that contain significant functional analysis are the report from the treating physician, Grey, and
23 the reports from examining physicians Bastien, Plevell-Omdahl, Fernandez-Barillas, Ruben,
24 Sullivan, and Chang. The ALJ discounted Grey's report because his methods are controversial
25 and not well supported by the general medical consensus. *Id.* The ALJ further discounted the
26 findings of Bastien, Fernandez-Barillas, and Chang for various reasons. (Tr. 931) Assuming
27 that the ALJ properly discounted those reports, his RFC should reflect the findings and
28 judgment of the remaining examining physicians: Plevell-Omdahl, Ruben, and Sullivan. The

1 medical record also contains functional reports from the non-examining state agency physicians,
2 but unless the ALJ provides specific and legitimate reasons, the reports of the examining
3 physicians should take precedence. The Commissioner herself seems to agree that Jeffries's
4 RFC should reflect the judgment of those physicians that the ALJ found to be reliable. *See*
5 (Doc. 31, p. 12) ("The opinions of Drs. Plevell-Omdahl, Fernandez-Barillas, Ruben, and
6 Sullivan constituted substantial evidence supporting the ALJ's finding of no mental impairment
7 and no functional limitations."). The ALJ's RFC, however, is not supported by the opinions of
8 those examining physicians.

9 In October of 1995, Jeffries was examined by David A. Ruben, M.D., for the state
10 disability determination service. (Tr. 369-372) Ruben diagnosed, among other things,
11 "adjustment disorder with depression, mainly exhibited as irritability." (Tr. 372) In his
12 decision, the ALJ wrote that Jeffries suffered from mental impairment best characterized as
13 "adjustment disorder with mixed anxiety and depressed mood." (Tr. 927) It therefore appears
14 that the ALJ accepted Ruben's report and his conclusions.

15 Ruben, however, documented mental limitations that were present even where
16 environmental contaminants are only moderate. He noted "the fluidity and fluency of her
17 speech and thought processes [are] impaired." (Tr. 372) He concluded "this lady is sensitive
18 to exposure in all except a controlled environment." *Id.* "In addition, any exposure increases
19 her symptomatology which includes difficulty with concentration, irritability, and cognitive
20 functions" *Id.*, *see also* (Doc. 31, p. 8) "Additionally she has physical symptoms most
21 prominently of headache, fatigue, muscle and joint pains, which make functioning limited, as
22 described above." (Tr. 372)

23 The ALJ discounted Ruben's conclusions as to Jeffries's non-exertional limitations. He
24 is permitted to do so, but first he must offer his reasons. And here he did not do that. *See Lewis*
25 *v. Apfel*, 236 F.3d 503, 509 (9th Cir. 2001) ("The ALJ is responsible for determining credibility
26 and resolving conflicts in medical testimony and ambiguities."). The court notes that those
27 reasons would have to be somewhat nuanced because the ALJ appeared to accept Ruben's
28

1 diagnosis, and yet discounted his assessment of Jeffries's functional limitations. This is not
2 impossible to do, but it must be done explicitly.

3 The Commissioner argues to the contrary that Ruben "did not mention any specific
4 functional limitations." (Doc. 31, p. 12); *see also* (Tr. 927) The court disagrees with the
5 Commissioner's characterization of the record.

6 A reverse situation is presented by Sullivan's medical report. Sullivan found no
7 functional limitations in agreement with the ALJ. His report does not, however, support the
8 ALJ's finding of impairment.

9 In March of 1997, Jeffries was evaluated by John B. Sullivan, Jr., M.D., for the State
10 Compensation Fund, an Arizona worker's compensation insurance provider. (Tr. 633) In
11 agreement with the ALJ, Sullivan concluded that Jeffries "would probably function in an
12 environment that meets ASHRAE [American Society of Heating, Refrigeration, and Air
13 Conditioning Engineers] standards of ventilation." *Id.*

14 On the other hand, Sullivan opined that Jeffries does not suffer from immunotoxicity or
15 toxic encephalopathy, while the ALJ found to the contrary that Jeffries suffered from a
16 "formaldehyde induced immune toxicity and chemical sensitivity." (Tr. 924) It is not clear why
17 the ALJ would accept the functional limitations from a medical source that completely rejected
18 the diagnosis that the ALJ believed was supported by the medical record. *Id.* Of course, the
19 ALJ may to do so if he explains his reasons. Here, he did not do so.

20 In August of 1994, Jeffries was examined by Jill M. Plevell-Omdahl, Ph.D. (Tr. 253-
21 255) Plevell-Omdahl diagnosed no mental impairment at all. (Tr. 255) She did find however
22 some mental limitations. *Id.* She concluded, "this client is capable of performing simple tasks."
23 (Tr. 255) "She can understand and carry out directions." *Id.* "She may have some difficulty
24 remembering instructions." *Id.* "She could not demonstrate good judgment." (Tr. 255)

25 The report by Plevell-Omdahl does not support the ALJ's functional assessment at all.
26 She concluded Jeffries has no mental impairment, while the ALJ believed that Jeffries does have
27 an adjustment disorder. (Tr. 927) On the other hand, Plevell-Omdahl found mental limitations
28 that the ALJ did not. She limited Jeffries to "simple tasks" and cautioned that she "may have

1 some difficulty remembering instructions.” (Tr. 255) As the court noted above, the ALJ could
2 discount Plevell-Omdahl’s opinion, but he first must explain why. That analysis is missing
3 from the decision.

4 The ALJ improperly discounted the opinions of the examining physicians. “Where the
5 Commissioner fails to provide adequate reasons for rejecting the opinion of a treating or
6 examining physician, we credit that opinion as a matter of law.” *Lester v. Chater*, 81 F.3d 821,
7 834 (9th Cir.1996). “Where we conclude that a claimant’s testimony or a doctor’s opinion
8 should have been credited and, if credited, would have led to a finding of eligibility, we may
9 order the payment of benefits.” *Regennitter v. Commissioner of Social Sec. Admin.*, 166 F.3d
10 1294, 1300 (9th Cir.1999).

11 Here, however, the reports of the examining physicians contradict each other. It is not
12 possible to credit each report. The case must be remanded to allow the Commissioner to again
13 analyze the medical record, resolve the inconsistencies, and recalculate Jeffries’s RFC. *See*,
14 *e.g., Varela v. Colvin*, 2013 WL 1164776, 4 -5 (C.D.Cal. 2013) (Remand was ordered where
15 the ALJ silently disregarded conflicting opinions in the medical record.); *see also Lewis v.*
16 *Apfel*, 236 F.3d 503, 509 (9th Cir. 2001) (“The ALJ is responsible for determining credibility
17 and resolving conflicts in medical testimony and ambiguities.”).

18 On remand, the Commissioner may reexamine whatever evidence she feels necessary
19 to properly evaluate Jeffries’s RFC. She may find it prudent to recontact Bastien and
20 Fernandez-Barillas. Further clarification from those physicians could explain why their
21 respective reports seemed to contain self-contradictory findings. *See* 20 CFR § 404.1520b(c)
22 (discussing methods for resolving an inconsistency in the record).

23
24 IT IS ORDERED that the final decision of the Commissioner is reversed. The case is
25 remanded for further proceedings.

26 The Clerk of the Court is directed to prepare a judgment and close this case.
27

28 DATED this 5th day of December, 2013.

Leslie A. Bowman

Leslie A. Bowman
United States Magistrate Judge

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